

**2009-2010
NIAGARA INTERNATIONAL MOOT COURT COMPETITION**

**A Dispute Arising Under the
Statute of the International Court of Justice**

February 2010

**THE GOVERNMENT OF CANADA
(Applicant)**

v.

**THE GOVERNMENT OF THE UNITED STATES
(Respondent)**

MEMORIAL OF THE RESPONDENT

TEAM#: 2010-14R

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STATEMENT OF FACTS

Emmanuel Rutaganda, a thirty-one year old fugitive, is facing extradition to Rwanda for alleged involvement in the Boudaire High School massacre, one of most atrocious crimes committed during the 1994 genocide. Rutaganda was born on September 10, 1978 in Montreal, Quebec but moved to Rwanda with his parents as an infant. He grew up in Kigali, Rwanda with his mother and father, both Rwandan nationals of Hutu ethnicity. In 1993, Rutaganda joined the Interhamwe militia group, the notorious paramilitary organization, who, with the assistance of the Hutu army, led the genocide of 800,000 Tutsi civilians. Rutaganda served in the Interhamwe militia during the genocide from April-August 1994 before fleeing the country with his mother immediately after the fall of the Hutu government. With financial backing from other Hutu exiles, Rutaganda established an African curio shop in Windsor Ontario. He then married a Canadian citizen in 2000 and had three children. Although Rutaganda has managed to avoid the Canadian criminal justice system since his escape from Rwanda in 1994, the Rwandan government issued an indictment in 2001 for Rutaganda and six other identified members of the Interhamwe militia for the murders of 275 Tutsi children. Rutaganda is charged with working with the Hutu army, who allegedly detained the school children at the Boudaire High School in May, 1994. A month later, Rutaganda, along with other members of the Interhamwe militia, set the building on fire with the children locked inside and shot anyone who attempted to escape. Specifically, Rutaganda is charged with 275 counts of murder by the Rwandan district in Boudaire.

Despite repeated requests from the Rwandan government, the Canadian government refuses to extradite Rutaganda in the absence of a treaty. Interpol issued a Red Notice on behalf of the Rwandan government, providing for Rutaganda's arrest from any country in the world if

he is found. Until recently, Rutaganda has lived and worked in Ontario as though he was an innocent man.

The American public refused to remain idle while an indicted Rwandan genocide perpetrator lived freely in Canada. In July 2009, an NBC television series, “The Wanted,” featured the story of Rutaganda’s involvement with the *Interhamwe* militia during the Rwandan genocide and his escape to Canada. The American public was alarmed to learn of the Canadian Government’s inaction. American newspapers responded to the television episode by publishing a number of articles condemning the situation.

At this time, the newly established Inter-Agency Working Group for Human Rights Violators (the “Agency”) began investigating Rutaganda’s case. The Agency, which was created in order to implement the Genocide Accountability Act of 2007, is comprised of: the Deputy Counsel of the National Security Council, the State Department Ambassador at Large for War Crimes Issues, the Section Chief of the Department of Homeland Security Immigration and Customs Enforcement’s Human Rights Violators and War Crimes Unit, the Director of the Department of Justice Office of Special Investigations, and the Director of the Department of Justice Office of International Affairs. The United States Immigration and Customs Enforcement (ICE) informed the Agency on July 21, 2009 of an opportunity to apprehend Rutaganda and transfer him to Rwanda for trial: Rutaganda’s mother, Marie, was in Detroit, Michigan for a medical procedure at the Detroit Clinic. The Agency submitted a plan entitled “Operation Motown Express” to President Obama, who signed off on it immediately. Pursuant to “Operation Motown Express”, the ICE sent an email from the Detroit Clinic to Rutaganda’s blackberry with a false message that Marie’s health was very poor and Rutaganda should visit immediately.

Upon receiving the email, Rutaganda used a false Canadian passport to enter the United States through the Windsor-Detroit tunnel. As he entered the Detroit Clinic, Rutaganda was arrested by ICE agents and a removal order was issued for Rutaganda's illegal entry into the United States. The United States immediately provided notification of the situation to Canada pursuant to the 2004 Canada-US Consular Notification Agreement. The United States Federal Courts affirmed that Rutaganda could be transferred to Rwanda.

The Government of Canada attacked the United States for its successful undertaking of "Operation Motown Success." When the United States ignored Canadian protests, the Prime Minister of Canada threatened to withdraw Canada's troops from Afghanistan unless the United States agreed to subject Rutaganda's case to the International Court of Justice for adjudication. The United States agreed to stay the transfer of Rutaganda to Rwanda pending the decision by the International Court of Justice, and Canada agreed to rescind its threats of withdrawing troops from Afghanistan.

QUESTIONS PRESENTED

- (1) Whether the “luring” of Canadian citizen Emanuel Rutaganda from Canada violated
 - a. Canada’s territorial sovereignty, the U.S.-Canada Extradition Treaty or the January 11, 1988 Exchange of Letters Between Canada and the United States on Transborder Abduction;
 - b. The internationally protected human rights of Emanuel Rutaganda guaranteed by the International Covenant on Civil and Political Rights and customary international law;
- (2) Whether the rendition of Emanuel Rutaganda from the United States to Rwanda for trial would violate international law because
 - a. Neither the United States nor Canada have an extradition treaty with Rwanda; as a child soldier Rutaganda lacked criminal culpability; and/or the courts of Rwanda are not capable of providing Rutaganda a fair trial.
 - b. As a child soldier Rutaganda lacked criminal culpability;
 - c. The courts of Rwanda are not capable of providing Rutaganda a fair trial.

JURISDICTIONAL STATEMENT

The Parties to this matter, Canada and the United States, agree to submit their dispute the International Court of Justice. Pursuant to Articles 36(1) and 40(1), and by agreement of the parties¹, the Court has jurisdiction to hear and adjudicate this dispute.²

¹ See Compromis ¶ 13.

² Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055.

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SUMMARY OF ARGUMENT

The United States acted lawfully to bring an outstanding criminal to justice by arresting Emanuel Rutaganda upon his entry into its territory. International law requires the United States and Canada to transfer Rutaganda to Rwanda to stand trial for the murder of 275 school-children. Rutaganda's age at the time of the alleged massacre does not prevent him from being held criminally culpable. As a result of substantial improvements in the judicial system, Rwanda is capable of providing Rutaganda a fair trial. In order to assist Rwanda in achieving restoration and reconciliation, the Parties must surrender perpetrators of genocide.

I. THE RENDITION OF EMANUAL RUTAGANDA FROM THE UNITED STATES TO RWANDA FOR CRIMINAL TRIAL DOES NOT VIOLATE INTERNATIONAL LAW

A. The luring of Rutaganda was not a violation of Canadian Territorial Sovereignty

1. Luring Does not Equate to Kidnapping Under International Law

The practice of luring an accused individual across a boundary in order to apprehend them is accepted by international as well as domestic laws. In *Prosecutor v. Dokmanovic*³, the International Criminal Tribunal for the Former Yugoslavia (ICTY) found that there is an important distinction between “luring” and forcible abduction.⁴ While forcible abduction may be considered a violation of territorial sovereignty, luring certainly is not, and “is consistent with the principles of international law.”⁵ Luring of an accused person is much less intrusive than a forcible abduction, as it does not require any physical entry into another territory. In domestic law, luring is also accepted among law enforcement. In the United States, the luring of a suspect across state lines for the purpose of apprehension is entirely legal.⁶

In a highly analogous case, *Stocke v. Germany*, the European Court of Human Rights held that the luring of an individual across State lines does not amount to “unlawful activities abroad.”⁷ In that case, an individual living in France was lured into Germany by German law

³ *Prosecutor v. Dokmanovic*, Case No. IT-95-13A, Decision on the Motion for Release by the Accused (Oct. 22, 1997).

⁴ *Id.* at para. 70-75

⁵ *Id.*

⁶ *See Ortega v. City of Kansas*, 875 F.2d 1497 (10th Cir. 1989).

⁷ *Stocke v. Germany*, App. No. 11755/85, 13 Eur. H.R. Rep. 839, 842 (Eur. Comm'n. H.R. 1991).

enforcement, for the purpose of prosecuting him for crimes committed in that State.⁸ At the time, an extradition treaty did exist between the two States, as it does in the present case.⁹

The fact that Stocke was tricked into entering Germany even when there was a valid extradition treaty in place, was not enough for the Court to find for the appellant in that case. In the instant case, the Court should similarly find that the “luring” of an individual does not amount to unlawful activity, therefore the US did not violate Canada’s sovereignty.

2. A Violation of Territorial Sovereignty Requires Physical Entry

In customary international law, the territorial integrity of a state is not offended by anything short of a physical intrusion.¹⁰ Article 2(4) of the United Nations Charter calls for members to refrain from the “threat or use of force against the territorial integrity . . . of any state.”¹¹ The type of “force” referred to in the Charter cannot be read to mean anything other than actual physical force against the territorial integrity of another State. During the drafting of the Vienna Convention on the Law of Treaties¹², some States sought to add “economic and political pressure” to the list of acts that would serve to invalidate a treaty (the coercive use of military force had already been agreed to be included).¹³ Due to the fear that “the of expansion of the concept of coercion beyond the clear limits on use of force in Article 2(4) of the United

⁸ *Id.* at para. 54

⁹ *See id.*

¹⁰ *See* Prosecutor v. Dokmanovic, Case No. IT-95-13A, para. 70-75, Decision on the Motion for Release by the Accused (Oct. 22, 1997).

¹¹ Charter of the United Nations art. 2(4).

¹² Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

¹³ Restatement (Third) of Foreign Relations Law § 331 (1987).

Nations Charter would open the doors to a wide variety of claims and undermine the fundamental principle *pacta sunt servanda*¹⁴, neither economic nor political coercion were eventually included in Article 52 of the Convention.¹⁵ This dilemma and its resolution demonstrate the current international custom regarding the interpretation of “use of force” as used in the UN Charter.¹⁶ Customary international law does not recognize other forms of coercion as being protected against by the Charter in its use of the term “use of force”. Nor is there is any custom in the international legal system that defines acts which do not physically offend a territory’s boundaries as violating territorial sovereignty.

Nor is this case comparable to cases involving remote cross border searches and seizures. In these cases, although law enforcement officers may not be physically present on the foreign territory in question, they are, arguable carrying out investigations on another territory, without that State’s consent.¹⁷ Remote Cross Border Searches involve the gathering of evidence, viewing of computer records and activities, and appropriation of information.¹⁸ These activities are much more intrusive and bear a stronger resemblance to a physical use of force, than the facts in the present case.¹⁹ Here, the US did no more than send an email across borders, which induced Rutaganda to travel to the US. Sending an email cannot be equated with a use of force.

¹⁴ See Restatement *supra* note 13.

¹⁵ *Id.*

¹⁶ See UN Charter *supra* note 11.

¹⁷ Jack Goldsmith, The Internet and the Legitimacy of Remote Cross-Border Searches, 2001 U. Chi. Legal F., 103, 108-9 (2001).

¹⁸ See *Goldsmith supra* note 17 at 105-6.

¹⁹ See *id.* at 107.

B. The luring of Rutaganda was not a violation of the U.S.-Canada Extradition Treaty or the Exchange of Letters

1. There is no Requirement That the Extradition Treaty be Utilized

The US-Canada extradition treaty is non-exclusive as to the means of obtaining jurisdiction over an accused individual. Article 9 of the extradition treaty between the US and Canada states that “the request for rendition shall be made through . . . diplomatic channel.”²⁰ The treaty does not say, however, that a request for rendition must be made.²¹ In *United States v. Alvarez-Machain*, the US Supreme Court held that the existence of an extradition treaty between the US and Mexico did not provide the exclusive means for rendition of individuals between the two States. Specifically, the court stated, “Extradition treaties exist so as to impose mutual obligations to surrender individuals in certain defined sets of circumstances, following established procedures.”²² The Supreme Court’s holding indicates that, barring explicit provisions to the contrary, a State may elect when to enter into the parameters of an extradition treaty, and whence that occurs the State will be bound by the treaty’s provisions and procedures.²³ However, if a State elects not to utilize the procedures laid out in the extradition treaty, they may do so without violating the treaty itself.²⁴

In the brief preamble of the treaty between the US and Canada, the two countries indicate that they are entering into the treaty for the purpose of “mak[ing] more effective the cooperation

²⁰ Treaty on Extradition Between the United States and Canada, U.S.-Ca., Dec. 3, 1971, 18 U.S.T. 1559.

²¹ *See id.*

²² *United States v. Alvarez-Machain*, 504 U.S. 655, 665 (1992); *See* J. Moore, *A Treatise on Extradition and Interstate Rendition* § 72 (1891).

²³ *See Alvarez-Machain*, 504 U.S. at 665.

²⁴ *See id.* at 665.

of the two countries in the repression of crime by making provision for the reciprocal extradition of offenders.”²⁵ This language indicates that the two countries did not intend to bind themselves to the treaty as the only means for extradition of an accused individual. Instead, the treaty leaves open the possibility that there may be some circumstances where either one or both of the countries might resort to some other form of action, including but not limited to, bilateral negotiations or some legally acceptable unilateral action. Because there is no language indicating that the provisions of the treaty are the only acceptable provisions, the fact that the US worked outside of the treaty does not equate to a breach, material or otherwise.

2. The Exchange of Letters Addresses Transborder Abductions, Not Luring

The Exchange of letters²⁶ between the US and Canada addressing transborder abductions does not apply to the course of action that the US undertook with Rutaganda. Luring a person out of a territory is not comparable with the entering of the territory and the forceful removal of that person therefrom. The fact that the letters do not mention “luring” indicates that the two parties did not understand the act to be an extraditable offense, unlike the criminal act of transborder abduction.

3. The Exchange of Letters Does not Create New Legal Obligations

The Exchange of Letters states that they are intended to “constitute an understanding . . . which is not intended to create or otherwise alter legal obligations for either Government.”²⁷ The 1988 letters simply reflect and reiterate the pre-existing international principle that use of force against

²⁵ See Extradition Treaty *supra* note 20 at preamble.

²⁶ Dec. 3 1971, 27 U.S.T. 983, T.I.A.S. No 8327, as amended by exchange of notes June 28 and July 9, 1974.

²⁷ See *id.*

the territorial sovereignty is prohibited. It is clear that the letters are only intended to call attention to possible overlooked violations of territorial sovereignty by bounty hunters.²⁸ If either Canada or the US understood “luring” to also be a possible overlooked violation of territorial sovereignty, it is likely that the issue would have been addressed, either alongside the issue of transborder abductions, or somewhere within the treaty or its protocols. “Luring” is mentioned nowhere within the treaty or its associated documents because correctly, neither country viewed “luring” as a territorial sovereignty issue. Nor should it be viewed as such today.

C. The United States did not violate Rutaganda’s human rights under either the ICCPR or customary international law

1. Rutaganda’s Arrest Was Not Arbitrary

Article 9 of the International Convention on Civil and Political Rights states that, “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”²⁹ Under this provision, there are certain due process standards which must be satisfied before an individual may be detained. The only standard potentially in question in the present case involves the right to be free from arbitrary arrest.

In January 2002, the International Criminal Police Organization issued a Red Notice, calling for the arrest of Emanuel Rutaganda from any country in whose territory he should be found.³⁰ Both the US and Canada are members of the organization.³¹ The issuance of a red

²⁸ See U.S.- Canada Treaty *supra* note 26.

²⁹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), ¶ 9, U.N. Doc. A/6316 (Dec. 16, 1966).

³⁰ Compromis Between Canada (Applicant) and the United States of America (Respondent) to Submit to the International Court of Justice Their Differences Regarding Emanuel Rutaganda, ¶ 5 (jointly notified to the Court on 24 October 2009) [hereinafter Compromis].

notice by INTERPOL is not an international arrest warrant.³² Rather, it is a mechanism by which an arrest warrant stemming from a national jurisdiction can be circulated throughout the world.³³ In the present case, a warrant for Rutaganda was issued by the Government of Rwanda.³⁴ Following the apprehension of Rutagana for illegal entry into the US on a false passport, the US provided Canada with timely notification of the situation, then began a domestic process, utilizing immigration and judicial branches, which resulted in the final conclusion that Rutaganda could indeed be removed to Rwanda.³⁵ All of the US' actions were in compliance with international human rights law, both under the ICCPR, and according to international custom.

2. Luring is not a Violation of Human Rights

“Luring” involves the use of trickery to cause an individual to act, according to their own free will, in a pre-calculated manner, for the purpose of apprehension. “Luring” differs dramatically from forceful abduction, and is nowhere in international law considered to be a violation of human rights. In *Stocke v. Germany*,³⁶ the European Court of Human Rights (ECHR) held that “luring” is not a violation of human rights under international law.³⁷ In that

³¹ Interpol.int, Member Countries, <http://www.interpol.int/Public/ICPO/Members/default.asp> (last visited Jan. 28, 2010).

³² Interpol.int, Red Notice, <http://www.interpol.int/Public/Wanted/Default.asp> (last visited Jan. 28, 2010).

³³ *See id.*

³⁴ 2010 Niagara Moot Court Competition Clarifications to the Compromis [hereinafter Clarifications II].

³⁵ Compromis, *supra* note 30, ¶ 10.

³⁶ *Stocke v. Germany*, App. No. 11755/85, 13 Eur. H.R. Rep. 839 (Eur. Comm'n. H.R. 1991).

highly analogous case, a German citizen living in France was lured into Germany by law enforcement agents for the purpose of arresting him there.³⁸ The ECHR specifically held that the acts of the law enforcement agents, in colluding to trick Stocke into entering Germany, did not extend to “unlawful activities abroad such as [returning] the applicant against his will from France to the Federal Republic of Germany.”³⁹

It should also be noted, even in the case of forceful abduction, the United Nations Security Council (UNSC) ruled that a territorial sovereignty violation does not necessarily correspond with a human rights violation.⁴⁰ In *The Question Involving Adolf Eichmann* resolution,⁴¹ the UNSC notes a number of considerations to their ruling that Israel should make reparations to Argentina. Practically all of those considerations involved issues of territorial sovereignty yet none of the involved any mention of a human rights violation.⁴²

II. INTERNATIONAL LAW REQUIRES THE UNITED STATES TO TRANSFER RUTAGANDA TO RWANDA

A. The United States Must Transfer Rutaganda To Rwanda Despite The Absence of An Extradition Treaty.

1. International law requires the United States to transfer Rutaganda to Rwanda.

³⁷ *Id.* at ¶ 51

³⁸ *Id.* at ¶ 8-19.

³⁹ *Id.* at ¶ 51.

⁴⁰ S.C. Res. 138, ¶ 1, U.N. Doc. S/4349 (June 23, 1960).

⁴¹ *Id.*

⁴² *Id.*

Despite the absence of bilateral treaties between Rwanda and the United States or Canada, the countries must cooperate in matters of extradition in the context of mutual assistance in criminal affairs.⁴³ Protocol I to the Geneva Convention functions as a multi-lateral treaty⁴⁴ and provides that State Parties “shall co-operate in the matter of extradition” and “shall give due consideration to the request of the State in who territory the alleged offence has occurred.”⁴⁵ Because all three countries are State Parties to Protocol I, it forms a legal basis for Rutaganda’s extradition to Rwanda.⁴⁶ Rwanda itself has recognized the obligation to extradite its citizens to the United States for trial, even where the alleged crime occurred in Rwanda.⁴⁷ Principles of reciprocity and mutual assistance require the United States to transfer Rutaganda.

2. Even if Protocol I is not binding, the Surrender Agreement between the United States and the Tribunal, together with Public Law 104-106, require the United States to transfer Rutaganda to Rwanda.

In the absence of a legal obligation under Protocol I, extradition is subject to national legislation. The Convention on the Prevention and Punishment of the Crime of Genocide

⁴³ See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art.88, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

⁴⁴ Redress & African Rights, *Extraditing Genocide Suspects from Europe to Rwanda*, 1, at 9, July 2008, available at http://www.redress.org/documents/Extradition_Report_Final_Version_Sept_08.pdf [hereinafter Redress]

⁴⁵ Protocol I, *supra* note 43.

⁴⁶ See Redress, at 9.

⁴⁷ See *United States v. Karake* 443 F.Supp.2d 8 (D.D.C. 2006).

requires that “the Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.”⁴⁸

The United States Constitution does not require an extradition treaty in order to transfer fugitives.⁴⁹ Extradition may be made pursuant to either a treaty or a statute.⁵⁰ The Agreement on Surrender of Persons Between the Government of the United States and the Tribunal (the “Surrender Agreement”) and § 1342(a) of Public Law No. 104-106 (1996) together provided a constitutional basis for surrendering a former Rwandan pastor charged with committing genocide, Ntakirutimana, to the Tribunal.⁵¹

Although the Surrender Agreement is between the United States and the Tribunal, not the Rwandan national courts, its purpose – to assist in prosecuting fugitives accused of committing genocide – necessarily entails cooperation with the Rwandan judicial system. The Tribunal seeks to achieve “national reconciliation” and “the restoration and maintenance of peace.”⁵² In order to achieve these goals, the Tribunal stresses the “need for international cooperation to strengthen the Courts and Judicial System of Rwanda, (with) regard in particular to the necessity for those Courts to deal with large numbers of suspects.”⁵³ The Tribunal is incapable of prosecuting every suspect and relies on Rwandan national courts to handle the majority of cases.

⁴⁸ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

⁴⁹ See *In Re Ntakirutimana*, No. Civ. L-98-43, 1998 WL 655708, at 10-13 (S.D.Tex. 1998).

⁵⁰ See *id.* at 33.

⁵¹ *Id.*

⁵² S.C. Res. 955, ¶ 7, U.N. Doc. S/RES/955 (Nov. 8 1994).

⁵³ *Id.* at ¶ 9.

States are obligated to cooperate with the Tribunal's request for assistance.⁵⁴ In order to support international efforts aimed at truth and reconciliation in Rwanda, states must surrender refugees to the Rwandan national courts.

B. Rutaganda's Age at the Time of the Alleged Massacre Does Not Release Him From Criminal Culpability.

1. At fifteen years old, Rutaganda was not a child soldier by international standards at the time of his alleged crime.

International law draws a line at age fifteen between victim and perpetrator. While it is a war crime to recruit or use children under the age of fifteen in armed conflict, states may recruit children aged fifteen and older into the armed forces.⁵⁵ Armed groups that are distinct from armed forces of the State, such as the *Interhamwe* militia, are advised not to recruit or use persons under the age of eighteen in armed conflict, but it is not a war crime to do so.⁵⁶

International law is careful to differentiate between children under the age of fifteen and soldiers over the age of fifteen. Rutaganda was almost sixteen at the time of the alleged massacre and was not a child soldier.

2. Even if Rutaganda is considered a child soldier, he may still be found criminally culpable.

⁵⁴ Statute of the International Criminal Tribunal for Rwanda, art. 28, Nov. 8, 1994, U.N. Doc. S/Res/1534 [hereinafter ICTR Statute].

⁵⁵ Rome Statute of the International Criminal Court, art. 8 (26), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]; Convention on the Rights of the Child, art. 38, Nov. 20, 1989, 1577 U.N.T.S. 3; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, art.3, May 25, 2000, 2173 U.N.T.S. 222 [hereinafter Optional Protocol].

⁵⁶ *See id* at art. 4.

International law does not preclude the prosecution of persons under the age of eighteen accused of international crimes.⁵⁷ International law recognizes that those who recruit or use child soldiers in armed conflicts are criminally culpable, but the law fails to address the criminal culpability of young soldiers.⁵⁸ The international community supports a juvenile justice framework for soldiers under the age of eighteen accused of international crimes.⁵⁹ Eighty-four countries are committed to recognizing that young soldiers are both perpetrators and victims, subject to juvenile justice.⁶⁰ Rutaganda's age may be considered as a factor in determining his culpability for the massacre, but it does not prevent him from being held accountable for his actions.

3. Rutaganda's culpability must be recognized for the purposes of restorative justice and reconciliation.

The purpose of the post-genocide justice system in Rwanda is national reconciliation and restoration.⁶¹ The international community supports this framework for juvenile justice as well.⁶² In order to fulfill these goals, the people responsible for atrocious crimes must be prosecuted.⁶³ The Statute for the International Criminal Tribunal for Rwanda does not provide

⁵⁷ See Rome Statute, *supra* note 55.

⁵⁸ See *id.*

⁵⁹ See The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, art. 11, Feb. 6, 2007 2007 available at <http://www.un.org/children/conflict/english/parisprinciples.html>. [hereinafter Paris Commitments]

⁶⁰ *Id.*

⁶¹ See S.C. Res. 955, ¶ 7, U.N. Doc. S/RES/955 (Nov. 8 1994).

⁶² See Paris Commitments, *supra* note 59.

⁶³ See S.C. Res. 955, *supra* note 52, ¶7-8.

exceptions based on the age of the perpetrator.⁶⁴ The process of national reconciliation will be thwarted if Rutaganda's trial for the massacre of hundreds of school children does not occur. In order to support the international goal of restoration in Rwanda, Rutaganda must face the consequences of his actions.

C. Rwanda Will Ensure That Rutaganda Receives a Fair Trial.

1. The Rwandan Judiciary is qualified to handle genocide cases.

The Rwandan judicial system is comprised of educated professionals with extensive experience dealing with the complexities of genocide cases.⁶⁵ The Constitution of Rwanda guarantees the autonomy of the judicial branch.⁶⁶ There are currently twenty-six High Court judges, who must have six years of professional experience, and there are fourteen Supreme Court judges, who must have eight years of professional experience.⁶⁷ Judges are trained in international criminal law and procedure. The independence of the judicial branch is evidenced by the 25% acquittal rate of defendants charged with genocide.⁶⁸

2. Major law reforms substantially improved the Rwandan judicial system.

⁶⁴ See ICTR Statute, *supra* note 54, art. 6.

⁶⁵ See Redress, *supra* note 4, at 32-33.

⁶⁶ See The Constitution of Rwanda, art. 140, May, 26, 2003, available at www.cjcr.gov.rw/eng/constitution_eng.doc.

⁶⁷ *Id.*

⁶⁸ Phil Clark and Nicola Palmer, *The International Community Fails Rwanda Again*, OTJR: OXFORD TRANSITIONAL JUSTICE RESEARCH WORKING PAPER SERIES, May 13, 2009, available at <http://static.rnw.nl/migratie/www.rnw.nl/internationaljustice/specials/commentary/090513-rwanda-clarke-redirected>.

Under the leadership of the Rwandan Law Reform Commission, a series of new law reforms in 2003 and 2004 substantially improved the judicial system.⁶⁹ The adoption of a new Constitution in 2003 was followed by several other legislative developments, including: ratification of the Genocide Convention of 1948, 2004 Gacaca law, the Transfer Law, and the abolition of the death penalty in 2007.⁷⁰ The laws addressed problems dealing with executive interference with the judicial system, lack of competence among judges, judicial corruption, and inadequate guarantees for due process in detentions, arrests, and trials.⁷¹ The reforms disposed of Rwanda's outdated system and created a modern, conventional system composed of fewer judges and courts. Many jurists observe the success of the reforms, noting the improved efficiency and general performance of the courts.⁷²

3. Recent anti-torture legislation reflects Rwanda's commitment to comply with international humanitarian standards.

Rwanda's recent domestic and international legislative actions demonstrate that it will not tolerate the use of torture. The 2003 Constitution prohibits the use of torture⁷³ and in 2008, Rwanda ratified the International Convention against Torture and other Cruel, Inhuman, or

⁶⁹ See Redress, supra note 44, at 30.

⁷⁰ *Id.*

⁷¹ Human Rights Watch, *Law and Reality: Progress and Judicial Reform in Rwanda*, 1, at 23, July 2008, available at http://www.hrw.org/sites/default/files/reports/rwanda0708_1.pdf [hereinafter HRW, *Law and Reality*].

⁷² *Id.*

⁷³ The Constitution of Rwanda, art. 15, May 26, 2003, available at www.cjcr.gov.rw/eng/constitution_eng.doc.

Degrading Treatment or Punishment.⁷⁴ While international observers have expressed concern in the past that torture may occur in Rwanda, reports in recent years note dramatic improvement, such that current evidence is sketchy at best. The 2007 United States Department of State Report noted a “sharp decrease in reports of torture and abuse of detainees and prisoners by police or prison officials.”⁷⁵ A year later, in 2008, the United States Department of State observed: “instances of torture and abuse of detainees and prisoners by police or prison officials were rare and not tolerated by officials.”⁷⁶ The government’s dismissal of police officers for excessive force is further evidence that the government will not tolerate these “rare” instances of police brutality. Any concern that torture exists is based on unconfirmed accusations which have become increasingly rare. The lack of confirmed reports in recent years coupled with the government’s stance against torture is assurance that Rwanda meets international humanitarian standards.

4. Prison Conditions in Rwanda meet international standards.

The prison system in Rwanda has undergone substantial changes in recent years and conditions continue to improve.⁷⁷ In March 2008, the Tribunal concluded a sentencing agreement with Rwanda, stating that “Rwanda has made significant progress ensuring it meets

⁷⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. 100-20, 1465 U.N.T.S. 85.

⁷⁵ United States Department of State, *2007 Country Reports on Human Rights Practices: Rwanda*, March 11, 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>.

⁷⁶ United States Department of State, *2008 Country Reports on Human Rights Practices: Rwanda*, Feb. 25, 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119019.htm> [hereinafter 2008 U.S. Dep’t of State Report].

⁷⁷ See Redress, *supra* note 44, at 32.

the necessary standards of prisons to accommodate ICTR convicts.”⁷⁸ Since July 2007, the prison population has decreased by nearly 50%.⁷⁹ Suspects who are extradited from other countries will be placed in especially created facilities, including the newly built Mpanga prison, which has the capacity to house 7,500 prisoners.⁸⁰ Consequently, neither the Tribunal nor the United Kingdom considered prison conditions a concern in their decisions not to transfer suspects to Rwanda.⁸¹

5. Rutaganda will be in a better position to build his defense in Rwanda than in a foreign country exercising universal jurisdiction.

Rutaganda will have better access to evidence, particularly witnesses, in Rwanda than he would in the United States or Canada. Sam Rugege, Vice-President of the Supreme Court of Rwanda, explains that the majority of witnesses live in Rwanda and only a small minority of witnesses lives abroad.⁸² It would be expensive, if not impossible in many cases, to fly witnesses to a foreign country. With respect to witnesses living outside Rwanda, Professor Schabas, the Director of the Irish Center for Human Rights, explains that testimony by video-link is a common procedure in many jurisdictions, and could be used in the Rwandan courts if necessary.⁸³ In any case, Rutaganda is more likely to find available witnesses in Rwanda than in a foreign country.

⁷⁸ *Id.*

⁷⁹ *Id.*; HRW, *Law and Reality*, *supra* note 71, at 83-84.

⁸⁰ Louis-Martin Rugendo, *Mpanga, a stronghold for the UN in Rwanda*, INTERNATIONAL JUSTICE TRIBUNE, May 4, 2008, available at http://sites.rnw.nl/pdf/ijt/IJT88_EV.PDF.

⁸¹ *See Redress*, *supra* note 44, at 32.

⁸² *Id.* at 31-32.

⁸³ *Id.*

The Rwandan government does not tolerate witness intimidation and offers protection to witnesses who fear testifying on behalf of genocide suspects. In 2005, the Rwanda government established a witness protection program and there is a special protection bureau in the Prosecutor General's Office.⁸⁴ The office investigates and prosecutes individuals accused of threatening or harming genocide witnesses. As of 2008, the government had investigated nearly 800 cases, of which 269 had been filed in court.⁸⁵ Courts are normally open to the public but courts will close proceedings to protect witnesses, or at the request of defendants.⁸⁶ The government also relies on the LDF, local leaders, police, and community members to ensure the safety of witnesses.⁸⁷ These special services safeguard against witness tampering and will ensure that Rutaganda's witnesses are protected and able to testify on his behalf.

CONCLUSION

THEREFORE, the United States respectfully request this Court find: 1) that the luring of Emanuel Rutaganda from Canada to the United States did not violate Canada's territorial sovereignty, the U.S.-Canada Extradition treaty, the January 11, 1988 Exchange Letters Between Canada and the United States on Transborder Abduction, or the human rights of Ruganda; and 2) that International Law requires the Parties to transfer Emmanuel Rutaganda to Rwanda.

⁸⁴ See 2008 U.S. Dep't of State Report, *supra* note 76.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*